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Administrative Appeal Decision - Florence, Joshwyne (2019-02-27)

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STATE OF NEW YORK – BOARD OF PAROLE

ADMINISTRATIVE APPEAL DECISION NOTICE

Name: Florence, Joshwyne

Facility: Clinton CF

NYSID: [REDACTED]

**Appeal
Control No.:** 12-062-18 B

DIN: 91-B-1501

Appearances: Joshwyne Florence (91B1501)
Clinton Correctional Facility
Route 374, Cook Street, Box 2001
Dannemora, New York 12929

Decision appealed: November 2018 decision, denying discretionary release and imposing a hold of 24 months.

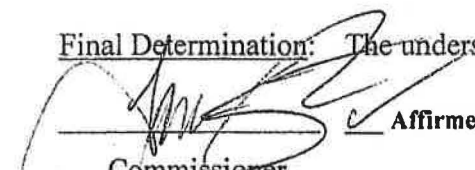
Board Member(s)
who participated: Alexander, Berliner.

Papers considered: Appellant's Briefs received December 13, 2018 and December 31, 2018


Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

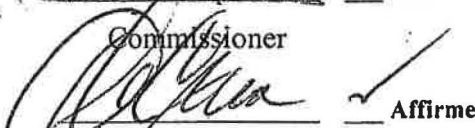
Final Determination: The undersigned determine that the decision appealed is hereby:


Commissioner

☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to _____


Commissioner

☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to _____


Commissioner

☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to _____

If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 2/27/19

Distribution: Appeals Unit – Appellant – Appellant's Counsel – Inst. Parole File – Central File
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

APPEALS UNIT FINDINGS & RECOMMENDATION

Name: Florence, Joshwyne

DIN: 91-B-1501

Facility: Clinton CF

AC No.: 12-062-18 B

Findings: (Page 1 of 1)

Appellant challenges the November 2018 determination of the Board, denying release and imposing a 24-month hold.

Appellant raises the following issue in his briefs: (1) the sentencing judge made a parole recommendation at the sentencing that Appellant serve no more than 22 years in state prison, and the Board is without authority to hold him in state custody “a day over 22 years”; and (2) Appellant should not have been sentenced to a lengthier sentence than his co-defendants.

As to the first issue, there was no parole recommendation made by the judge at sentencing, and in the event there was, the court’s recommendation is but one factor for the Board to consider. Executive Law § 259-i(2)(c)(A)(vii); Matter of Maida v. Evans, 2009 NY Slip Op 32974(U), 2009 N.Y. Misc. Lexis 4333 (Sup. Ct. Albany Co. Dec. 4, 2009) (Ceresia, S.C.J.) (the Board considered the appropriate factors including the sentencing judge’s favorable letter and was not required to enumerate or give equal weight to each factor considered); see also Matter of Duffy v. New York State Bd. of Parole, *Decision and Order* dated April 15, 2016 (Sup. Ct. Columbia Co.) (Mott, J.) (dismissing contempt motion where record reflected Board considered sentencing minutes at *de novo* review and recognizing court could not compel Board to give this factor any particular weight).

As to the second issue, neither the Board of Parole nor the Appeals Unit has the authority to alter the sentence imposed by the trial court at Appellant’s sentencing.

Recommendation: Affirm.